

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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EMANUEL GARCIA, *on behalf of himself, FLSA*
Collective Plaintiffs and the Class

Plaintiffs,

-against-

CHIPOTLE MEXICAN GRILL, INC.,

Defendant.

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Case No. 16-CV-0601

DECLARATION OF FRANCO OCHOA

I, Franco Ochoa say and declare, as follows:

1. I have personal knowledge of the facts described below and would competently testify to those facts.
2. I am currently employed by Chipotle Mexican Grill, Inc. ("Chipotle") as a General Manager at its Chipotle New York Plaza downtown location. I have worked for chipotle as crew, kitchen manager, service manager, apprentice and now General manager in Manhattan and Queen from July 2012. As a crew and hourly manager I was paid an hourly wage for all time that I work for Chipotle, now I am a salaried employee

Chipotle's Timekeeping Policy

3. Chipotle has a written Timekeeping Policy that mandates that all work time be accurately recorded and that employees be paid for all time worked.

4. Chipotle's Timekeeping Policy appears in the Crew Handbook. As a new Crew Member they are given a copy of the Crew Handbook. Every employee is given such a handbook. They acknowledge that they received and understood the information in the handbook. Chipotle's Timekeeping Policy is also set forth in the Restaurant Management Handbook, which I received upon my promotion to General Manager.

5. The requirement in Chipotle's Timekeeping Policy that they record all time worked includes time spent engaged in every kind of work, such as work performed before or after a scheduled shift, time spent at formal and informal meetings, and all time spent training. They have always been required to record this time, and they have always been paid for this time as well as for all other time they have spent working for Chipotle.

6. As hourly employees, Chipotle's Timekeeping Policy requires them to record the start and end times of their off-duty meal periods in addition to the time worked. Chipotle also pays them for a thirty-minute break period for every shift, but they are still supposed to clock in and clock out when they take a break. If an employee works less than six hours, they do not get a lunch break, but do receive a complementary meal.

7. During my employment with Chipotle, my crew members have always been paid for all the time they worked. They have been trained that if their time recorded is inaccurate in any way or if their pay did not include payment for all the time they had worked during the pay period it covered, they should immediately notify the Apprentice,

me, or Restaurateur responsible for my restaurant so the error is corrected. Additionally, Chipotle provides confidential, toll-free hotlines that they can contact with any concerns, mistakes or problems. The information about the hotlines is displayed on a poster in the employee area of my restaurant. They understand that if they felt they could not discuss their concerns with my Apprentice, me, or Restaurateur, they could call one of the hotlines, and their call would be kept confidential. I have not seen any employee be disciplined, threatened, treated unfairly in any way or have his or her hours reduced for raising an issue with a manager about being paid for all time worked.

Chipotle's Timekeeping System

8. My crew members use the "point-of-sale" or "POS" system in the restaurant to record their hours that they work for Chipotle. They clock in and clock out of the system by swiping a card provided by Chipotle. It is their responsibility to record the time that they work accurately so they can be fully and properly paid. We provide them with a training video on how to properly use the "Workday" application to always ensure they are properly being paid. On orientation, I tell them to check their hours weekly so that we can promptly change the time to be reflected properly.

9. Like other employees they have occasionally forgotten to clock in before they began work for the day. If they forget to clock in or cannot clock in for any reason, they notify one of the managers or me of the time I began working. I can edit their time entry on the POS system with their consent so that they will be paid for any time they worked before they remembered to clock in for the day. It is their responsibility to notify me or

the Apprentice manager if they forget to clock in, and they review the correction to the time record to make sure that they will be paid for all of their time.

10. When they are done working for the day, they clock out in the same way that they clocked in, using their card. They have occasionally forgotten to clock out before leaving the restaurant for the day. If they forget to clock out, it is their responsibility to notify one of the managers , or me, what time they stopped working. I can then edit their time entry on the POS system so that they will not be paid for time they did not work. It is their responsibility to notify me if they forget to clock out and to review the correction that the manager makes to be sure that they are totally and properly paid for all of their time.

11. I ask that they review and agree to any corrections to their time. I have never asked anyone to agree to an untruthful adjustment or correction, and they have never agreed to an improper adjustment. As a manager, I sometimes need to make corrections to the time records of Crew Members who have forgotten to clock in or clock out. I have the employees review each correction to make sure that they will be properly paid for all hours worked. When they clock out for the day, the POS system automatically prints out a receipt that contains a record of their recorded time. They are able to review the receipt to be sure all of their time is recorded and they can use that receipt to confirm that Chipotle pays them for the hours that they have worked. The receipt lets them know of any correction or charge to their time made by me, so they are able to confirm that the adjustment was accurate. They keep track of the time they work. Their paystub has always shown payment for all time they have worked during the pay period.

12. There are multiple methods for me and crew members to ensure that their time is properly recorded and that they are properly compensated for all time worked. There include methods to correct any errors in time records before their pay is calculated and method to correct any mistakes they might identify in the pay they actually receive. List any that apply: These methods include: (1) going to a second manager; (2) going to team a lead/restaurateur; (3) calling 800 number; (4) relying upon payroll; etc.)] I encourage the leaders in my store to establish trust with crew members so that they can feel comfortable approaching them or me to address any concern.

Working at Chipotle

13. The hours my crew members work are scheduled by the managers at my restaurant each week, myself included. Typically the hours they work are the hours they are scheduled to work. Sometimes, if the restaurant is busy or slow, or if other employees are not available, me and/or a manager might ask them to work less or more than scheduled. No one other than the managers at my restaurant schedules them to work or directs them to work more or less than scheduled.

14. Although me and the managers at my restaurant might ask them to work more or less hours than scheduled, we have never told them to work without clocking in or to clock out and continue to work. I have not seen any other employees being asked or instructed to work off the clock. Working off the clock would clearly violate Chipotle policy because employees must record all time worked and must be paid for all time worked.

15. There have been times that my crew members have been called in to work on scheduled days off. From time to time, I need additional crew to assist with restaurant operations. The reasons can vary greatly, but if they are ever called in to work on a day that they are not scheduled to be at the restaurant, they always clock in to the POS system and record all their time worked. I have never asked a crew member to work “off-the-clock” on a scheduled day off or at any other time.

16. At times my crew members have been scheduled to work the last shift of the day, which is sometimes called the “closing” shift. The employees on the closing shift are responsible for cleaning up the restaurant and getting it ready for business the next day. My restaurant closes to customers at 7:00 p.m. every night. The employees on the closing shift are scheduled until 7:45 p.m. or 8:00 p.m., and they are usually done working by that time. Even in the rare cases when employees stay past 8:00 p.m., in my experience, the closing shift usually completes its work well before 12:30 a.m..

17. My employees were always clocked-in and paid for work they did closing the restaurant and preparing it for the next day. I never asked them to clock out and continue our work without pay.

18. I have asked anyone to clock out and continue working or making preparations for any incoming shift. If food was not completely prepared or if we had additional cleaning to do to help prepare for the incoming shift, they remained on the clock beyond our scheduled shift to complete the tasks required of us.

19. Managers often have pre-shift and post-shift meetings with crew members. The reasons for these meetings vary. The crew members are always allowed to clock-in before the meetings begin and/or to remain clocked-in while they occur.

20. Chipotle Upper East Side: While working at the Upper East Side location around 2012, I was never asked to clock out at a predetermined time, but instead, was told by my GMs and Apprentices to only clock out when I completed my duties. I was never asked to work "off-the-clock," I never witnessed my GMs and Apprentices give such a directive to any other employee, and I never learned from any other employee during the course of any discussions that they had been given such a directive. In addition, when the Aloha system reset after midnight, I would be automatically clocked out, but would inform GM or Apprentice of the actual hours I worked, and he/she would manually adjust my time the following day so that I was paid for all hours worked. I never witnessed GM or Apprentice give a contrary direction to any other employee, and I never learned from any other employee during the course of any discussions that they had been given such a directive.

Chipotle's POS Reset

21. I understand that Chipotle's POS system automatically resets at 12:30 a.m. every night at my location. I am not aware of any crew members who were working at 12:30 a.m. when the POS system was reset. The reset has never resulted in them not being paid for all time worked. I am not aware of the reset causing any other employees to not be paid for all hours worked.

22. In my experience, at my time employed by Chipotle, the POS used to be reset around midnight, but is now reset at 12:30 at my restaurant.

23. If a crew member was clocked in when the POS system reset., the system generated a receipt, showing their total time worked. However, if they were still working, they were expected to clock back in immediately or ask me or one of the managers to clock them back in. They also had me or Service/Kitchen managers correct any errors and obtain full compensation for time that the POS system did not record.

24. Me and my managers have explained to crew members and the other employees that the POS system resets and that there are some very simple steps they need to take after the reset.

25. If they continue working after 12:30 a.m. the crew members can make sure that they are paid for the time they work by letting me or one of my managers know. In this case, me or one of my managers will adjust the time record to reflect that they kept working after 12:30. This is a way to make sure they are fully paid. If me ore one of the managers somehow forgets to correct the record during the shift, me or one of the managers on the first shift the next day is expected to correct the time record so that all time is paid.

26. I am not aware of any employee who has ever been disciplined, threatened, treated unfairly in any way or had his or her hours reduced for notifying his or her manager of the need for a correction to the POS record.

Overtime Work and Pay at Chipotle

27. My crew members are usually scheduled to work less than 40 hours in a week and rarely work more than 40 hours in a week.

28. My crew members have occasionally worked over 40 hours in a week. When that occurred, they have always been paid overtime at time and one-half for hours over 40.

29. I am not aware of any employee or manager who has been disciplined for scheduling or working over 40 hours of work in a week.

30. My crew members have never been told that they are not permitted to work overtime hours; nor have they been warned that they are approaching overtime and that they must clock out or face discipline or termination.

31. My crew members' work time in one week has never been transferred or shifted to another week. They have always been paid overtime for any time they worked over 40 hours in a week.

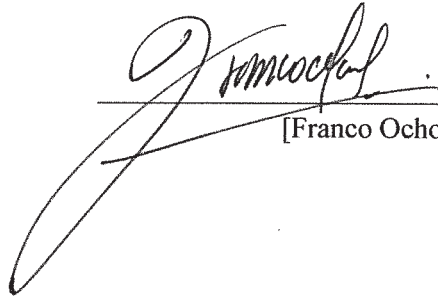
32. It is my understanding that my employees know and understand that there is a proposed collective and class action lawsuit against Chipotle by a former employee alleging wage and hour violations, including allegations that he and others were forced to work "off-the-clock" and worked overtime that was not properly paid. We receive emails regarding current lawsuits and post information in the employee area. It is my understanding that my employees understand that the former employee wants to include them and other employees in the lawsuit and that this declaration may affect the lawsuit.

33. I have completed this declaration voluntarily, of my own free will, and am choosing to do so because it is true and correct. I have not been pressured, coerced,

threatened or promised anything in connection with this declaration. I understand that I will not be retaliated against as a result of my choice to either sign or not sign this declaration. Chipotle informed me that it is entirely my choice whether to sign this declaration and that my choice would not affect my job in any way.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 19th day of July, 2016, in Manhattan, New York.


[Franco Ochoa]